

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE
STATE OF IDAHO

IN THE MATTER OF DIVERSION OF WATER)
BY EARL FELLOWS AND JAMES RIDGE FROM)
SPRING FLOWS AND THE BELL TANNER) PRELIMINARY ORDER
DRAIN WITHOUT AN ADEQUATE MEASURING)
DEVICE AND CONTROLLING WORKS)

[WATER RIGHT 13-2135, 13-2147, 13-2175, 13-2279 and 13-2282]

After an on-site inspection by the Department, it has been found that inadequate measuring devices and lockable controlling works are associated with the above water rights on a water course known as the Bell-Tanner drain.

The Bell-Tanner drain has also been found to be tributary to the Bear River and therefore under the control of the Watermaster of the Bear River in Water District #11.

Section 42-701, Idaho Code, provides:

42-701. INSTALLATION AND MAINTENANCE OF CONTROLLING
WORKS AND MEASURING DEVICES BY WATER APPROPRIATORS -
PROCEDURE UPON FAILURE TO INSTALL AND MAINTAIN - MEASURING
AND REPORTING OF DIVERSIONS - PENALTY FOR FAILURE TO COMPLY -
REPORT FILING FEE.

(1) The appropriators or users of any public waters of the state of Idaho shall maintain to the satisfaction of the director of the department of water resources suitable headgates and controlling works at the point where the water is diverted. Each device shall be of such construction that it can be locked and kept closed by the watermaster or other officer in charge, and shall also be of such construction as to regulate the flow of water at the diversion point. Each such appropriator shall construct and maintain, when required by the director of the department of water resources, a rating flume or other measuring device at such point as is most practical in such canal, ditch, wellhead or pipeline for the purpose of assisting the watermaster or department in determining the amount of water that may be diverted into said canal ditch wellhead or pipeline from the stream, well or other source of public water. Plans for such headgates, rating flumes or other measuring devices shall be approved by the department of water resources.

(2) Any appropriator or user of the public waters of the state of Idaho that neglects or refuses to construct or maintain such headgates, controlling works or measuring devices . . . , upon receiving ten (10) days' notice from the director of the department of water resources within which to begin and diligently pursue to completion the construction or installation of the required device or devices or to begin and diligently pursue to completion a remedy to such defects as exist in accordance with said notice, then the director of the department of water resources may order the duly qualified and acting watermaster of the water district to shut off and refuse to deliver at the point of diversion, the water owned by such appropriator or user until the user does construct and maintain such headgates, controlling works or measuring devices or remedy the defects which exist or the director may take action pursuant to section 42-1701B, Idaho Code, to enforce the requirement to construct, install or maintain such devices.

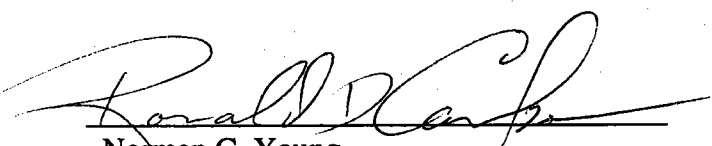
(3) The appropriators or users of the public waters of the state of Idaho shall be given a reasonable time within which to complete construction of such headgates, controlling works or measuring devices, depending upon the size and extent thereof, when due diligence has been used in the prosecution of such work.

THEREFORE IT IS HEREBY ORDERED THAT:

1. Earl Fellows, holder of Water Rights #13-2135, 13-2147, 13-2175, and 13-2279 and James Ridge, holder of Water Right #13-2282 shall install a measuring device and lockable controlling works of a type acceptable to the Department on the associated diversions from the Bell-Tanner drain system.

2. The watermaster shall shut off and refuse to deliver water from the Bell-Tanner drain and associated springs to the above stated water users if they do not have adequate controlling works and a measuring device after June 1, 2003.

Dated this 12th day of August, 2002.

for 
Norman C. Young
ADMINISTRATOR

August 12, 2002

Dear Mr. James Ridge:
RE: Order for Head Gate and Measuring Device

**EXPLANATORY INFORMATION
TO ACCOMPANY A
PRELIMINARY ORDER**

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. It can and will become a final order without further action of the Department of Water Resources (department) unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243 (3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue on the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the department or the Idaho Water Resource Board (Board) is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the department and who has not previously been afforded an opportunity for a hearing on the matter may request a

August 12, 2002

Dear Mr. Earl Fellows:

RE: Order for Head Gate and Measuring Device

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CERTIFICATE OF SERVICE

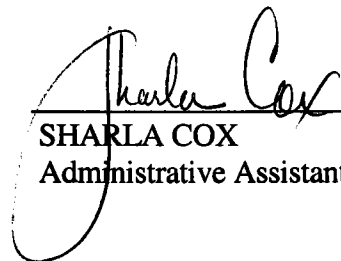
I hereby certify that on the 12th day of August, 2002, I mailed a true and correct copy, postage prepaid, of foregoing **NOTICE OF HEARING** to the following:

James Ridge
1239 N 2200 West
Preston ID 83263

Earl Fellows
1022 N 1400 West
Preston ID 83263

Pete Peterson
Watermaster District 11
PO Box 340
Preston ID 83263

cc: Water District 11 file


SHARLA COX
Administrative Assistant